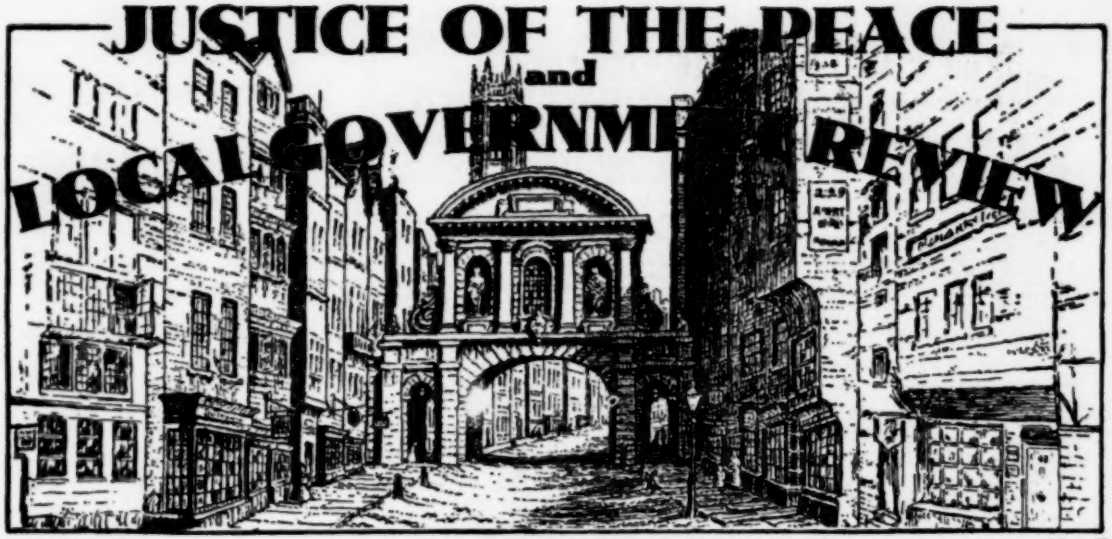

VOL. CXVI LONDON: SATURDAY, FEBRUARY 16, 1952 No. 7

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Official & Classified Advertisements, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. per line and 3s. per displayed headline. Classified Advertisements, 24 words 6s. (each additional line 1s. 6d.) Box Number, 1s. extra *Latest time for receipt* 10 *a.m. Thursday*

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HAMPSHIRE COMBINED PROBATION AREA

Appointment of Full-time Male Probation Officers

APPLICATIONS are invited from persons who have had experience and training as Probation Officers for the appointment of three full-time male probation officers for the above area. One of the appointments will be to an existing vacancy, whilst the other two—one of which will include liaison work for the Higher Courts—will be new appointments. Candidates must be not less than 23 nor more than 40 years of age (except in the case of serving officers).

The appointments and salaries will be in accordance with with Probation Rules and the salaries will be subject to superannuation deductions. The successful applicants will be required to provide a motor car for which an allowance will be paid in accordance with the County scale for the time being in force.

Applications, giving particulars of age, education, present salary, qualifications and experience, with the names and addresses of not more than three persons to whom reference may be made, should be submitted to the undersigned not later than February 29, 1952. Canvassing, either directly or indirectly, will be a disqualification.

G. A. WHEATLEY,
Clerk to the Probation Committee.

The Castle,
Winchester.
February 12, 1952.

EASTERN ELECTRICITY BOARD

Appointment of Secretary

APPLICATIONS are invited from suitably qualified candidates for the post of Secretary to the Eastern Electricity Board.

The vacancy arises through the appointment of Mr. Arthur Bond, the present Secretary and Solicitor to the Board, to be Deputy Chairman of the Yorkshire Electricity Board.

The appointment is superannuable and the salary will be £2,750 a year.

Applications, to arrive not later than February 29, 1952, should be addressed to : The Chairman, Eastern Electricity Board, Wherstead, Ipswich, Suffolk.

COUNTY OF MIDDLESEX

Spelthorne Petty Sessional Division

SOLICITOR required as Senior Assistant to Clerk to the Justices, Feltham. Experience in Justices' Clerk's office desirable. Commencing salary £850 per annum (scale £850 × £50—£1,000 per annum) plus temporary cost of living bonus (now £75 per annum). Pensionable subject to medical assessment. Applications with copies of not more than three recent testimonials must reach the undersigned by March 8, 1952 (quoting K.489 J.P.). Canvassing disqualifies.

C. W. RADCLIFFE,
Clerk to the Standing Joint Committee.

Guildhall,
Westminster, S.W.1.

LANCS (No. 11) COMBINED PROBATION AREA

Appointment of Male Probation Officer

APPLICATIONS are invited for the above appointment. The Combined Area consists of the County Borough of St. Helens and Prescot and St. Helens County Petty Sessional Divisions. Applicants must not be less than 23 or more than 40 years of age, except in the case of serving whole-time probation officers. The appointment will be subject to the Probation Rules, 1949, as amended, and the salary in accordance with the prescribed scales.

The successful applicant will be assigned to Prescot and St. Helens County Divisions.

Applications, with two recent testimonials, to reach the undersigned not later than February 29.

W. McCULLEY,
Clerk to the Combined Area Probation Committee.

Town Hall,
St. Helens.

CITY OF PLYMOUTH

Junior Assistant Solicitor

APPLICATIONS are invited for the appointment of Junior Assistant Solicitor in my office within Grades Va—VII (£600—£760 per annum) of the A.P.T. Division of the National Scales. Commencing salary will be according to the date of admission. Previous experience in a local government office is not required ; good conveyancing experience is essential. The appointment is superannuable, and the successful applicant will be required to pass a medical examination.

Applications, which must be received by me not later than Tuesday, February 19, 1952, should give particulars of the applicant's age, education, articles, date of admission, present and previous appointments and legal experience, and should state the names and addresses of not more than two referees as to character and ability.

COLIN CAMPBELL,
Town Clerk.

Pounds House,
Peverell, Plymouth.

CITY OF PLYMOUTH

Appointment of Conveyancing Clerk, Town Clerk's Office

APPLICATIONS are invited for the above appointment at a salary of £490 per annum rising by annual increments of £15 to £535 per annum. The appointment is superannuable and the successful applicant will be required to pass a medical examination. Previous experience in a Local Government Office is not essential. Applications giving details of experience in a Solicitor's or Municipal office and particularly Conveyancing work, and particulars of present and previous employments must reach me before Tuesday, March 11, 1952. Applications should state the names and addresses of not more than two referees as to character and ability.

Dated February 8, 1952.

COLIN CAMPBELL,
Town Clerk.

Pounds House,
Plymouth.

KIDDERMINSTER BOROUGH
KIDDERMINSTER PETTY SESSIONAL DIVISION
HUNDRED HOUSE PETTY SESSIONAL DIVISION
BEWDLEY PETTY SESSIONAL DIVISION

First Assistant to Clerk to the Justices

APPLICANTS should have had extensive experience of the duties of an assistant to a Justices' Clerk including typing depositions, issuing process and keeping accounts, and must be capable of acting as Clerk of a Court.

The Salary will be in accordance with A.P.T. Grade III (£400—£545).

The post is superannuable and subject to the conditions of the National Joint Council for Local Authorities' Staffs.

Applications, stating age, education, qualifications and magisterial experience, together with copies of not more than three recent testimonials, should be sent to the undersigned not later than Saturday, March 1, 1952.

G. W. HARRIS,
Acting Clerk to the Justices.

16, Vicar Street,
Kidderminster. (X79).

Justice of the Peace
and
Local Government Review
[ESTABLISHED 1837.]

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Proclamation

"WHEREAS it hath pleased Almighty God to call to His Mercy our late Sovereign Lord King George the Sixth, of Blessed and Glorious Memory, by whose Decease the Crown is solely and rightfully come to the High and Mighty Princess Elizabeth Alexandra Mary:

WE, therefore, the Lords Spiritual and Temporal of this Realm, being here assisted with these of his late Majesty's Privy Council, with representatives of other members of the Commonwealth, with other Principal Gentlemen of Quality, with the Lord Mayor, Aldermen and Citizens of London, do now hereby with one voice and Consent of Tongue and Heart, publish and proclaim, that the High and Mighty Princess Elizabeth Alexandra Mary is now, by the Death of our late Sovereign of Happy Memory, become Queen Elizabeth the Second, by the Grace of God, Queen of this Realm and of all Her other Realms and Territories, Head of the Commonwealth, Defender of the Faith, to whom Her lieges do acknowledge all Faith and constant Obedience with hearty and humble Affection; beseeching God, by whom Kings and Queens do reign, to bless the Royal Princess Elizabeth the Second with long and happy Years to reign over us.

GIVEN at St. James's Palace this Sixth day of February in the year of Our Lord one thousand nine hundred and fifty-two."

God Save the Queen

NOTES of the WEEK

Expensive Maintenance

In a note at p. 33, *ante*, we drew attention to the case of a family, dispersed among institutions, involving public funds in an expenditure of something like £1,000 a year.

A Sunday newspaper reports another instance of the expense to which the public are put in maintaining other people's children. It was said that at a meeting of the Cambridgeshire County Council a member told the council that a single woman, a displaced person, had had two children who were now costing the council nearly £7 a week each. The mother was paying 5*s.* a week towards their maintenance.

We do not wish to criticize any particular children's home or any particular local authority, but, as we have said before, we feel that ordinary members of the public must wonder why it costs so much to maintain children in homes and other institutions, the cost of one child being sometimes as much as the wages upon which a working man contrives to keep a wife and several children. No one wants children who are without the benefits of good parents and a good home to suffer, but many people are inclined to ask if it is not possible to deal with them kindly and suitably without spending quite so much money.

Probation in Warwickshire

In his annual report for the year 1951, Mr. W. H. Palmer, principal probation officer for the county of Warwick, shows that full use is made in the county of the probation service, the percentage of cases placed on probation being slightly in excess of the figure for the country as a whole. The results are gratifying. As we have often said, what happens after supervision is ended is a better test of the success of probation than the completion of the probation period without further trouble. In the county of Warwick, the Chief Constable has supplied statistics about any subsequent convictions upon an indictable charge of those persons who satisfactorily completed their period of probation in 1945. These show that eighty-five *per cent.* of all such persons have apparently continued to go straight even though they are not under supervision. It is pointed out that whilst supervising a person on probation the probation officer frequently establishes such a good relationship with him and his family that, even when the supervision period ends, he is still regarded as a friend of the family to whom they can turn for advice and help should the need arise.

Some of the officers in the county have case loads that are obviously too heavy. In this connexion the report states: "It is perhaps not without significance that the percentage of probation cases completed as 'satisfactory' is only seventy-four *per cent.* this year, as against eighty *per cent.* in 1950." This is a matter which will naturally receive the attention of the probation committee. On the subject of juvenile deliquency, Mr. Palmer writes: "The number of children and young persons dealt with by the juvenile courts for the more serious offences has continued to increase. During 1951 the number was 639 compared with 546 and 424 during 1950 and 1949 respectively. The steady increase in the number of young offenders has led many people to feel that steps should be taken by juvenile courts to underline parental responsibility." This, it is suggested, can be done by making freer use of the power to order a father to give substantial security for his child's good behaviour, by requiring the father's personal attendance at court and not accepting the mother's attendance instead, even if this means some loss of wages, and by making more orders for the payment of compensation to prosecutors who have suffered loss. As to payment of compensation, it is said that adults, no less then juveniles, usually accept an order for compensation as a basic principle of justice. As to inquiries by probation officers for the purpose of assisting the court to decide on the most appropriate treatment, the report states: "It is encouraging to note that more courts are requiring their probation officers to submit such reports and are prepared to adjourn cases for this to be done." Pre-trial inquiries are better than no inquiries, but inquiries after conviction are to be preferred and s. 25 (2) of the Criminal Justice Act, 1948, has made it easier for adjournments for this purpose to be made without inconvenience to the justices.

Bastardy Law Amendment

The present editor of *Lushington's Law of Affiliation and Bastardy*, like his predecessor, has commented on the confused patchwork of statutes constituting bastardy law and the pressing need for a new and comprehensive statute. No one who is interested in the illegitimate child and its legal position can doubt that the present state of affairs is thoroughly unsatisfactory. It is therefore a matter of satisfaction that a strong committee representing the British Medical Association and the Magistrates' Association has considered the whole question and produced a report which, acceptable to many people in most of its recommendations, will also prove an excellent basis for discussion with those who at present are not prepared to agree with the whole of the report.

The report, under the title *The Law In Relation to the Illegitimate Child* is obtainable from the British Medical Association, Tavistock Square, W.C.1, price 6*d.* The Council of that Association has given its unanimous approval of the report, but the council of the Magistrates' Association has made it clear that it is not necessarily committed to all the views expressed.

Whatever may be the reception accorded to the specific recommendations of the committee, there can hardly be any doubt about the desirability of a new investigation into the whole question of illegitimacy, the law relating to the illegitimate child, and the social and psychological effects upon the child. Much has been done for children during the present century, and in many respects the illegitimate child has benefited, but there still remain some respects in which such a child is handicapped as a matter of law, quite apart from the no less important psychological problems for which solutions ought to be sought.

Recommendations of the Committee

Among the recommendations of the joint committee for alterations in the law, one which is likely to find considerable support is that there should be an amendment of the law stating clearly the effect of certain judicial decisions on the words "single woman," and making it clear to what extent a married woman may be allowed to apply for an affiliation order. As has

been pointed out before, the abolition of the poor law has weakened the grounds upon which some of the earlier decisions can be supported, and it is contended by many that these should be abrogated by statutory provision.

At present, the maximum payment under an affiliation order is £1 a week, whatever the position of the parties. The report recommends that this should be increased to 30*s.* a week, to correspond with the maintenance allowance in the case of a legitimate child, and that an affiliation order should be capable of extension beyond the age of sixteen in the case of a child undergoing continued education or training. This seems reasonable enough. Another suggestion, which may not be so widely supported, is that jurisdiction should be given to the High Court to make affiliation orders without limit upon the amount the court may order.

The report deals with the vexed question of corroboration and makes certain proposals which, it is hoped, would enable a court to make an order without the usual corroborative evidence, subject to certain conditions. These suggestions would need careful study, but it cannot be denied that at present there are cases in which the mother is unfortunate in being unable to obtain an order. It is of course necessary to guard against the danger of making orders without corroboration, and the position of the defendant must be safeguarded. The difficult question of blood tests was the subject of discussion by the joint committee, but as it could not arrive at agreement no recommendation is made.

In many instances, the mother and the putative father prefer not to come to court, and they enter into an agreement. Such agreements when honourably fulfilled are a perfectly satisfactory way of dealing with the situation, but when there are arrears or when the agreement is practically repudiated by the man, the position of the mother is less satisfactory than that of the mother who has obtained an order. The committee recommends that the mother should be permitted to register her agreement at her local magistrates' court or in the High Court if the amount agreed is beyond the limit of the jurisdiction of magistrates' courts. Thereafter the parties should be in the same position as if a court had made a bastardy order. The amounts could then be varied by a court if the means of the parties altered. The advantage of magistrates' courts for people of small means, it is suggested, is that payment can be enforced more easily, cheaply and quickly than in a county court or the High Court. Further, it is pointed out that upon the death of the father, any arrears due under an affiliation order are at present irrecoverable. It is suggested that the position should be reconsidered with due regard to the interests of the wife and of any other children of the deceased.

Psychological Factors

The joint committee naturally went into the question of the effects of illegitimacy upon the upbringing and outlook of the illegitimate child, and here the medical members could make a valuable contribution to add to that of members who approached the question from other angles. For lack of a father in the home, the average illegitimate child "Is less likely than the legitimate child to find the basic pattern for good emotional and social development in his own home." If the mother subsequently marries the father, this may supply the deficiency, but unfortunately such marriages not infrequently turn out unhappily, and the lot of the child may be worse than ever.

Moreover, the illegitimate child is sometimes treated unkindly by other young people, sometimes by his mother and stepfather in a home where there are also legitimate children. All this may have a profound effect upon the mind of the child, and the question might be asked whether it would not be better to conceal the fact of illegitimacy when this is possible. The report is definitely against such a policy. It is considered almost certain that sooner or later the fact will come to light, and it is recommended that the child should usually be informed at some such age as eight to eleven or even earlier if the child asks questions. Disclosure should not be made during adolescence, except under expert advice and guidance.

How far illegitimacy is a predisposing factor in delinquency is a matter upon which opinions have differed strongly, but there does seem to be trustworthy evidence that there is a higher rate of delinquency among illegitimate children than among the legitimate. Here, again, there is room for investigation into causes and a research for remedies.

We commend the careful study of the report, and we think the committee is amply justified in urging that "A committee of inquiry should be set up by the Government to investigate the present law relating to the maintenance, custody and welfare of illegitimate children with a view to recommending amendments to the law."

Northern Ireland Fire Authority

We have received a copy of the first annual report of the Northern Ireland Fire Authority, which was established under the Fire Services (Amendment) Act (Northern Ireland), 1950. The members of the authority receive no salaries or fees, but may be allowed travelling and out of pocket expenses. The fire force commander is of course a whole-time officer, and he is assisted by two honorary chief officers. In addition, there were on March 31, 1951, eighty-three whole-time officers and men, and 710 retained personnel. Retained personnel receive a retaining fee of £24, £18 and £15 *per annum* according to rank in addition to fees for attendance at fires.

The authority has been assigned the duty of training auxiliary firemen, enrolled throughout Northern Ireland, with a view to their taking part in civil defence. Another duty devolved upon the authority by the transfer of the functions of the district councils under the Factories Act (Northern Ireland), 1938, which relate to means of escape from factories in case of fire.

The report adds :

" Furthermore, it is the policy of the authority to undertake, in a voluntary capacity, the inspection of hospitals, institutions, schools, and similar premises, and to advise the governing bodies with regard to fire prevention measures and the provision of adequate means of escape in case of fire. In addition, instruction in elementary fire-fighting methods is given to the staffs of the buildings concerned.

The importance of the authority's activities under this heading cannot be over-emphasized, as during the year under review it was found that many of the buildings inspected by officers of the authority lacked adequate or suitable equipment for the extinction of fires or for enabling occupants to escape from the buildings on the occurrence of a fire. Again, it was discovered on various occasions that expensive items of fire-fighting equipment, purchased by the owners of the premises concerned, had been neglected over the years and were in no condition to be used should the need have arisen . . . "

It is unfortunately true that these recommendations are not always carried out and sometimes are even ignored. The authority is reluctant, however, to exercise compulsory powers and continues to proceed by recommendation rather than by compulsion.

The report, a twenty page pamphlet is well printed, copiously illustrated, and contains informative tables of statistics.

MULTIPLICATION OF COUNTS IN CRIMINAL CASES

By C. B. ORR, *Barrister-at-Law*

The question whether counts charging several offences can or cannot be joined in one indictment is a comparatively simple one. Rule 3 of the rules under the Indictments Act lays down that " Charges for any offences, whether felonies or misdemeanours, may be joined in the same indictment if those charges are founded on the same facts or are a part of a series of offences of the same or a similar character."

Unless the several offences are founded on the same facts or are part of a series of offences of the same or similar character more than one indictment must be presented and separate trials on each indictment must result. Should counts charging several offences be wrongly joined in one indictment an objection is likely to result in the prosecution electing to proceed on one or more correctly joined counts.

When counts of several offences are rightly joined in the same indictment, it may in many cases be of great importance to the defendant that the various counts should be tried separately. Counsel for the defendant may in such case apply for separate trials.

Whether the several counts should be tried together, is a question for the court to decide at its discretion. In exercising that discretion the court must consider the interests of justice, the ability of the jury, with the aid of the summing up, to weigh the evidence on each count separately and any possible prejudice to the accused person.

It has been clearly laid down that capital and non-capital charges should not be joined in the same indictment, *R.* v. *O'Grady* [1941] 28 Cr. A.R. 33, nor should counts for indecent offences against both male and female adults be tried together, *R.* v. *Sims* [1946] 1 All E.R. 697. Offences under the Road Traffic Act, 1930, should not be included in the same indictment as rape or other serious offences, *R.* v. *Thomas* [1949] 33 Cr. A.R. 74, and the offences of dangerous driving and driving whilst disqualified are not to be tried together, *R.* v. *Pomeroy* [1935] 25 Cr. A.R. 147.

The main test appears to be one of admissibility of evidence and in particluar whether the evidence on all counts could be called on any particular count.

If the evidence on all counts can be called on any particular count, all the counts may be tried together unless there is a great multiplicity of counts as in *R.* v. *Carless*, [1934] 25 Cr. A.R. 43, where the Lord Chief Justice in condemning such indictments as unfair to the prisoner and jury, quoted Hawkins, J., in *R.* v. *King* [1897] 1 Q.B. 214 : " Though not illegal, it is hardly fair to put a man upon his trial on such an indictment (containing forty counts), for it is almost impossible that he should not be grievously prejudiced as regards each one of the charges by evidence which is being given upon the others. In such a case it would not be unreasonable for the defendant to make an application that each count, or each set of counts, should be tried separately."

In *R.* v. *Sims*, Lord Goddard said : " We do not think that the mere fact that evidence is admissible on one count and inadmissible on another is by itself a ground for separate trials ; because often the matter can be made clear in the summing up without prejudice to the accused. In such a case as the present, however, it is asking too much to expect any jury when considering one charge, to disregard the evidence on the others, and if such evidence is inadmissbile, the prejudice created by it would be improper and would be too great for any direction to overcome."

In *Makin* v. *A.-G. for N.S.W.* [1894] A.C. 57, at page 65, Lord Herschell laid down the principle that: " The mere fact that the evidence adduced tends to show the commission of other crimes does not render it inadmissible if it be relevant to an issue before the jury, and it may be so relevant if it bears upon the question whether the acts alleged to constitute the crimes charged in the indictment were designed or accidental, or to rebut a defence which would otherwise be open to the accused."

Where the circumstances of the offence charged are consistent with an innocent intention, the prosecution may adduce evidence which shows that they were consistent only with a guilty intent, even though such evidence shows that the accused has committed one or more other offences, *Thompson* v. *R.* [1918] A.C. 221 and *R.* v. *Hall* [1952] 1 All E.R. 66, but " in such cases the judge ought to consider whether the evidence which it is proposed to adduce is sufficiently substantial, having regard to the purpose to which it is professedly directed, to make it desirable in the interests of justice that it should be admitted. If, so far as that purpose is concerned, it can in the circumstances of the case have only trifling weight, the judge will be right to exclude it. To say this is not to confuse weight with admissibility. The distinction is plain, but cases must occur in which it would be unjust to admit evidence of a character gravely prejudicial to the accused even though there may be some tenuous ground for holding it technically admissible. The decision must then be left to the discretion and sense of fairness of the judge," *Noor Mohamed* v. *R.* [1949] 1 All E.R. 365, *per* Lord du Parcq.

Evidence is not to be excluded merely because it tends to show that the accused is of bad disposition, but only if it shows nothing more ; evidence of specific acts or circumstances connecting the accused with features of the crime is admissible even though it tends to show him to be of a bad disposition, *R.* v. *Sims*, *supra*.

In *Thompson* v. *R.* [1918] A.C. at p. 226, Lord Dunedin said : " The law of evidence in criminal cases is really nothing more then a set of practical rules which experience has shown to be best fitted to elicit the truth as to guilt without causing undue prejudice to the prisoner." At p. 236 Lord Parmoor said : " It is a recognized principle of criminal law that, apart from special conditions or statutory enactment, evidence is not admissible merely to prove that the person accused has a general propensity to commit a crime similar in character to that with which he is charged. It is of great importance that this principle should be maintained to ensure a fair trial in criminal cases. On the other hand, such evidence is admissible if there is a connecting relationship between it and the particular crime with which the prisoner is charged. If such evidence is admissible it cannot be excluded on the ground that it may incidently introduce considerations which may tend to prejudice the trial of the person accused." At p. 232 Lord Sumner said : " No one doubts that it does not tend to prove a man guilty of a particular crime to show that he is the kind of man who would commit a crime, or that he is generally disposed to crime or even to a particular crime ; but sometimes for one reason sometimes for another, evidence is admissible, notwithstanding

that its general character is to show that the accused had in him the makings of a criminal."

In *R.* v. *Bond* [1906] 2 K.B. 389, Lord Alverstone, at p. 394, said : " The general rule of law applicable in such cases can be clearly stated. It is that, apart from express statutory enactments, evidence tending to show that the accused had been guilty of criminal acts other than those covered by the indictment cannot be given unless the acts sought to be proved are so connected with the offence charged as to form part of the evidence upon which it is proved, or are material to the question whether the acts alleged to constitute the crime were designed or accidental or to rebut a defence which would otherwise be open to the accused . . . This statement of these general principles is easy, in applying them it is often very difficult to draw the line and decide whether a particular piece of evidence is admissible or not."

In *R.* v. *Bailey* [1924] 18 Cr. A.R. 42, in holding that when an indictment contains many counts dealing with many particulars the jury should be directed to return a verdict on each count, and they should be distinctly warned against supplementing evidence on any one by evidence on any other, the Lord Chief Justice said : " It is so easy to derive from a series of unsatisfactory accusations, if there are enough of them, an accusation which at least appears satisfactory. It is so easy to collect from a mass of ingredients, not one of which is sufficient, a totality which will appear to supply what is missing."

To sum up :

1. Charges for several offences may be joined in the same indictment if : (*a*) they are all founded on the same facts, or (*b*) they are part of a series of offences of the same or a similar character.

Provided that : (i) capital and non-capital charges, (ii) counts charging indecent assaults on adult males and females, (iii) charges for offences under the Road Traffic Act, 1930, and for serious crimes, (iv) charges for dangerous driving and driving whilst disqualified are not to be so joined.

2. Charges for several offences having been rightly joined in one indictment may be tried together unless the court consider, at its discretion, that (i) owing to the multiplicity of the charges the accused would be grievously prejudiced in regards each one of them by evidence which is given on the others ; or (ii) for any reason it would be so difficult, despite the summing up for the jury to discriminate between the evidence on each particular charge that the accused would be prejudiced ; or (iii) although the evidence on other charges is technically admissible on any other particular charge, its weight would be trifling in relation to that particular charge.

MAINTENANCE ORDERS AND NATIONAL ASSISTANCE

By ROY H. WEEKS

The respective liabilities of husband or putative father and the State to maintain wives and children ; the duplication of function where liability and need co-exist ; the procedure and liaison necessary to diminish overlap as between the parties ; and the reimbursement of the State ; are matters of importance in the enormous social operation of maintenance orders and National Assistance.

Under the poor law it was an acknowledged feature that assistance could be given by way of a loan, and where there was in force a court maintenance order in favour of the person to whom the " loan " had been granted, it was an easy matter of co-operation between the old public assistance and the court to arrange " repayment of the loan " when the next payment was made under the court order, subject, of course, to the then existing circumstances of the " borrower." With the modification of this principle by the 1948 Assistance Act, it is interesting to consider whether many assisted people are getting a " double grant."

The 1948 Act does not affect certain statutory and common law rights to maintenance. A wife is able to enforce her right (and the right of the children of the marriage) to be maintained by the husband, except where by her misconduct she has lost the right in law. An unmarried mother can also enforce her right to have her children maintained by the putative father. The courts of summary jurisdiction, in particular, are now well organized in the enforcement of these rights where maintenance orders and affiliation orders have been made. Such orders should operate as number one priority in the liabilities of a husband or putative father.

Where a husband or putative father fails to meet his liability under a court order, then the woman, subject to the requirements of the National Assistance Act, is able to implement the liability which the State acknowledges that it owes to her, and obtain assistance. The Act requires that payments shall be made " to assist persons . . . who are without resources to meet their requirements . . . " It is interesting to notice that s. 42 of the Act creates a distinct liability by enacting that a man shall be liable to maintain his wife and his children. " His children " relates to those of a marriage or those of which he is adjudged to be the putative father. The National Assistance Board may enforce this liability where they have assisted a person falling within the scope of that liability (s. 43). It is this dual liability which gives rise to the position that a husband or putative father who is caught by the enforcement procedure as to maintenance orders, and whose " enforcer " has sought assistance under the Act and has received payment, is technically liable then to the " enforcer " and to the State. The " enforcer " may then get benefit from two sources ; immediate assistance from the State and eventual benefit on payment of the arrears of maintenance. This becomes quite an important matter where the man has been a persistent defaulter, resulting in the woman receiving steady payments from the Board, and then after protracted court proceedings for arrears he is faced either with paying or imprisonment and by some means is able to produce the money—perhaps £60, a sum which has accrued over a period when the woman's need was met by the Assistance Board. It is the woman's money and she is entitled to receive it as of right. Even if the court had knowledge that this sum was " ethically " due to the Board, it has no power to order that it shall be paid over to that body. The only alternative to the woman receiving the sum is for the court to remit the arrears and let the man off. The Board, of course, could institute proceedings under s. 43, but this is not often done. Throughout the country this overlap of benefit must amount to a considerable sum of money and it would be interesting to ascertain whether there are adequate measures in operation to ensure that some, if not all, of this sum finds its way back to the public purse.

It is suggested that, within the framework of existing law and organization, an adequate system of procedure, calling for the closest liaison between offices of National Assistance and courts,

could be built up to produce an effective means of reducing the expense to the State which this overlap causes.

The " assisted " person in connexion with maintenance orders falls into one of two classes: (*a*) the woman whose husband or putative father of her children is a *persistent* defaulter under the court order, and (*b*) the woman whose man is an *intermittent* defaulter. The first class should not present much difficulty: as soon as he is acknowledged as falling within this category, say, on the assessment of the collecting officer, the woman, if she seeks it and is eligible under the Act, should be granted a sum equal to the allowance awarded her by the court. She should be advised that this is only possible (in the absence of statutory provision it would need to be a matter of approach to her) if she authorizes the Board to receive any payments made on her behalf to the court which are not in excess of the amount paid to her by way of assistance. This must be treated not as a repayment by an assisted person but as an acknowledgment, embracing the spirit of s. 43 (enforcement against a person liable to maintain), that it is a sum of money equitably due to the State. In a court with which we are acquainted this has occurred in many instances and the result is that the National Assistance Office is receiving a repayment of something like £150 a quarter. In larger courts the sum would be much higher. The one difficulty about this procedure is that the woman, content as she usually is to have a regular payment, loses interest in the court order and takes no step to set the collecting officer in motion to enforce the court order. This can be overcome by notice being given to her in accordance with s. 4 of the Married Women (Maintenance) Act, 1949, and at the same time sending a copy of the notice to the Assistance Board so that they too, if necessary, can be alive to the enforcement and inquire of the woman whether she has in fact authorized enforcement of the order. In any case where a woman refused to enforce an order, it would then, of course, be for the Board to institute proceedings direct under s. 43. But generally it is unlikely that a woman would not be " co-operative " when she is receiving her allowance regularly instead of having to wait, in some cases, long periods, between each payment.

The second class, the *intermittent* defaulter gives rise to greater difficulty. The man might miss with a payment which usually is available for the woman to collect from the court, say, on a Friday. She is faced with the problem of making do, borrowing from someone, or going to the National Assistance office. In many cases, the last course is adopted. She obtains an amount from the Board, perhaps enough for one week. On the following Friday she again calls at the court and there finds two weeks' payments awaiting her, last week's and this week's. So in two weeks she receives the equivalent of three weeks' maintenance, and the State, through no maladministration has lost that money with seemingly no claim on the person liable to maintain, because he has fulfilled his legal obligation. What might help in such cases is for the collecting officer, on being acquainted by the woman that it is her intention to seek National Assistance, (and this usually flows from the conversation) is to issue a note (properly authenticated and dated) indicating that an amount was due from a named man, with his address, on such a date and that such payment has not been received. She takes this to the National Assistance office and so obviates the necessity for that office to telephone for confirmation of non-payment. If a payment is made by the Board, they in turn should notify (by indication on, perhaps, an extended portion of the original note) the collecting officer of the amount so that he can record the matter in his books. This could be done on a weekly basis by the National Assistance Board. The woman might be persuaded by the National Assistance officer to authorize them, if possible, to draw the amount paid to her as an assisted person, from the next payment made under the order if that amount exceeds the weekly allowance to which she is entitled under the court order. The collecting officer is then able without any disruption in his book-keeping to apportion payments received so that the woman receives her amount and the balance can operate as a repayment to the board from a person liable to maintain. This would also enable the collecting officer to have an accurate picture when presenting a case of arrears to the court. He would be in a position to inform the court that of the amount of arrears which had accrued a proportion of such arrears had been met, as far as the woman was concerned, by the National Assistance Board. The court might think it proper to have regard to this in considering their decision. If the arrears for which the man is before the court amount to, say, £50, it might well be the case that the woman has received £25 of them by way of assistance. In such a case the National Assistance Board would be entitled to regard themselves as entitled to make a claim against the man: would it not simplify the whole matter if the court *had* power to award payment to the Board? This could be done where a lump sum is paid by the man or it could be part of the adjudication of the court—" that you shall pay 25*s*. per week the current amount of the court order, plus 10*s*. per week off the arrears, such payment off the arrears to be apportioned equally between the amount due to the woman and the National Assistance Board."

Section 43 of the 1948 Act indicates that there shall be a reimbursement to the State: Common Law and Statute Law also demand maintenance for the woman, of the classes mentioned. But it is clearly most unconscionable that the man shall be faced with a dual liability capable of being taken from both his pockets at the same time. Where maintenance orders are in force against a man, it is proper, we suggest, that the court and the National Assistance Board, where it becomes necessary for a woman to be assisted, to ensure that they have such liaison that the best is given to each of the three parties involved: the woman, the man, and the State.

A much deeper research needs to be made, not in the form of an article, but as a solid discussion of officials on both sides with a view to working out a really efficient scheme and so to alleviate to some extent the financial burden which the country now carries.

NEW COMMISSIONS

CHESTER COUNTY

Mrs. Gladys Mary Baddeley, 87, Audley Road, Alsager.
Harold Gordon Bamber, 1, Outwood Drive, Heald Green, Cheadle.
George Brooks, The Hough, Malpas.
Winston Crosthwaite, 52, Princes Avenue, Eastham, Wirral.
Harvey Vincent Davenport, The Haven, Townfield Road, West Kirby.
Herbert John Salisbury Dewes, Home Farm, Thelwall.
Stanley Messenger Dodd, 102, Welsh Row, Nantwich.
William Stanley Edwards, 43/45 Station Road, Ellesmere Port.
Alexander Ludovic Grant, T.D., Marbury Hall, Marbury.
William Ernest Jolley, 14, Mertoun Road, Walton, nr. Warrington.
Edward Egerton Jones, The Sheiling, Hillcliffe Road, Walton, Warrington.
Thomas Henry King, 36, Sherwood Road, Meols, Hoylake.
Mrs. Mary Gwynedd Marsh, Dolobran, Davenham.
Mrs. Josephine Mary Mellor, Kyngarth, Parker Avenue, Hartford, Northwich.
Harold Ernest Robert Peers, Windyridge, Bollington, nr. Macclesfield.
Sydney Arthur Salt, 139, Moor Lane, Wilmslow.
Alfred Geddes Snape, 4, Shaftesbury Avenue, Vicars Cross, Chester.
William Farrar Vickery, Kinderton Lodge, Middlewich.
Joseph Reginald Walley, 331, Bramhall Lane, Davenport, Stockport.
Albert Maurice Watson, The End House, Marple Road, Offerton, Stockport.
Horace Lionel Wharrad, 364, Pensby Road, Pensby, Wirral.
Harry Wharton, 3, Deane Avenue, Timperley.

WEEKLY NOTES OF CASES

COURT OF APPEAL

(Before Sir Raymond Evershed, M.R., Jenkins and Hodson, L.JJ.)

YOUNG *v.* BUCKLES

January 15, 1952

Building Control—Architect's fees—Work in excess of licensed amount—Recovery by architect of fees—Defence (General) Regulations, 1939 (S.R. & O., 1939, No. 927), reg. 56A, (4), (6).

APPEAL from Liverpool County Court.

The plaintiff, an architect, claimed from the defendant, the owner of a social club, professional charges amounting to £48 10*s.* in connexion with building work done on the club premises. A building licence permitting an expenditure of £525 was obtained, but work exceeding that sum was carried out. At the date of the issue of the writ the defendant had spent £482. It was contended for the defendant (i) that, by virtue of the Defence Regulations, 1939, reg. 56A (4), architects' fees formed part of the amount permitted by the licence to be spent on building work and that any excess of the amount allowed by the licence made the whole contract illegal and the fees irrecoverable, and (ii) that an architect who supervised the carrying out of an illegal building contract committed an offence under para. 6 of reg. 56A, and, therefore, could not recover his fees.

Held: (i) assuming that the licensed amount included the plaintiff's fees, at the date of the issue of the plaint payment of the amount claimed, added to the sums already paid, would not have caused the amount limited by the licence to be exceeded; illegality only attached to the excess over the licensed amount, and a contract was only illegal in so far as it involved a claim for payment of a sum larger than that for which the licence was granted; and, therefore, when the plaintiff issued his plaint he had a cause of action, was not a party to an illegal contract, and was entitled to the sum claimed.

Dennis & Co., Ltd. v. *Munn* ([1949] 1 All E.R. 616), applied.

(ii) in any event, services as an architect such as those rendered by the plaintiff were not "services used for the purpose of a building operation" within the meaning of the Defence (General) Regulations, reg. 56A, and, therefore, fees payable to architects or other professional persons in connexion with building operations were not included in the sum for which the licence was granted.

Appeal dismissed.

Counsel: *Youds* for appellant; *Rigg* for respondent.

Solicitors: *Pritchard, Englefield & Co.*, for *M. J. Canter & Co.*, Liverpool; *Woodcock, Ryland & Co.* for *Grundy & Cartwright*, Manchester.

(Reported by F. Guttman, Esq., Barrister-at-Law.)

KING'S BENCH DIVISION

(Before Lord Goddard, C.J., Byrne and Parker, JJ.).

R. *v.* HOLSWORTHY JUSTICES AND ANOTHER. *Ex parte* EDWARDS

January 31, 1952

Assault—Assault on county court bailiff serving default summons—"Execution under process of court of justice"—Offences against the Person Act, 1861 (24 and 25 Vict., c. 100), s. 46.

MOTION for order of *mandamus*.

At a court of summary jurisdiction sitting at Holsworthy, Devon, an information was preferred by the applicant, Leonard Arthur Edwards, a county court bailiff, under s. 42 of the Offences against the Person Act, 1861, against the respondent, Barkell, for an assault alleged to have taken place when the applicant was endeavouring to serve a default summons on the respondent. The respondent contended that the justices had no jurisdiction to hear the information on the ground that it was an assault in which a question arose as to an "execution under the process of [a] court of justice," and that, accordingly, the jurisdiction of the justices was ousted by s. 46 of the Act and proceedings should have been taken under s. 31 of the County Courts Act, 1934. The justices accepted this contention and held that they had no jurisdiction to hear the information. The prosecutor having obtained leave to apply for an order of *mandamus* directing the justices to hear and determine the information,

Held, applying *Reg* v. *Briggs* (1883) (47 J.P. 615), that it was impossible to say in the present case that any question arose as to any execution under the process of a court of justice, and, therefore, the order for *mandamus* must issue.

Counsel: *J. P. Ashworth* and *R. J. Parker* for the applicant; *Besley* for the respondent.

Solicitors: *Treasury Solicitor*; *Masons*.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

HARRIS *v.* HARRIS

January 30, 1952

Husband and Wife—Maintenance—Cessation of order—"Residence" of wife with husband—Husband and wife living beneath same roof under estranged conditions for more than three months—Summary Jurisdiction (Separation and Maintenance) Act, 1925 (15 and 16 Geo. 5, c. 51), s. 1 (4).

CASE STATED by Wolverhampton justices.

On May 27, 1943, after the parties had been married for some years, the wife, Lucy Harris, took proceedings against her husband, Walter Harris, under the Summary Jurisdiction (Married Women) Act, 1895, alleging desertion, persistent cruelty, and wilful neglect to provide maintenance for her and her child. The justices made an order that the wife be no longer bound to cohabit with her husband, giving her the custody of the child and ordering the husband to pay £2 a week maintenance for her and 10*s.* a week for the child. At the date of that order the husband and wife were living in the same house, though not cohabiting and under conditions of estrangement, and they continued so to live for seven months afterwards. On May 16, 1947, the child attained the age of sixteen, and the weekly amount in respect of him ceased to be payable. On March 11, 1948, a complaint by the wife in respect of arrears amounting to £42 was heard by the justices, and on that day the husband filed a counter-summons asking that the original order be varied by decreasing the amount of the payments. The wife gave her consent to the remission of the arrears, and the justices made an order reducing the weekly amount payable to the wife to £1 15*s.* In December, 1949, the justices heard a further complaint by the wife in respect of arrears and made an order committing the husband to prison for two months, such order to be suspended as long as the husband paid and continued to pay a weekly sum of £2. On July 7, 1951, the justices heard a further complaint by the wife in respect of arrears alleged to be due to her. At that date, if the original order as varied was still enforceable, arrears to the amount of £20 13*s.* were payable thereunder. The justices held that, by reason of the parties having lived under the same roof for more than three months after the making of the original order, in view of the provisions of s. 1 (4) of the Summary Jurisdiction (Separation and Maintenance) Act, 1925, the original order was not enforceable and that they had no jurisdiction to deal with the complaint, which they dismissed. The wife appealed. Section 1 (4) provides that an order under the Act of 1895 "shall cease to have effect if for a period of three months after it is made the married woman continues to reside with her husband."

Held, applying *Evans* v. *Evans* (112 J.P. 23) and *Wheatley* v. *Wheatley* (113 J.P. 459), that the justices were right in holding that they had no jurisdiction to make the order sought, because it would amount to a variation of an order which, by virtue of the operation of s. 1 (4) of the Act of 1895, had come to an end. The appeal, must, therefore, be dismissed.

Counsel: *R. E. Chapman* for the wife; *Syms* for the husband.

Solicitors: *Wainwright & Co.* for *Kendrick, Williams & Feibusch*, Wolverhampton; *Willis & Willis*, for *A. C. Skidmore*, Wolverhampton.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

QUALITY DAIRIES (YORK), LTD. *v.* PEDLEY

January 22, 29, 1952

Food and Drugs—Milk—Distributor—Failure to ensure cleanliness of vessel—Contract by distributor with wholesale dairymen—Purchase, cleaning and bottling done by wholesale dairymen—Delivery by wholesale dairymen to customer—Liability of distributor—Delegation of duty imposed—Milk and Dairies Regulations, 1949 (S.I. 1949, No. 1588), reg. 26.

CASE STATED by the Recorder of York.

At a court of summary jurisdiction at York an information under reg. 26 of the Milk and Dairies Regulations, 1949, was preferred by the respondent, Pedley, charging the appellant company, Quality Dairies, York, Ltd., for that they, on September 11, 1950, being a milk distributor, failed to secure that a vessel used for containing milk, namely, a milk bottle, was, immediately before use by it, in a state of thorough cleanliness, in that there was dirt on the inside of the said vessel. The justices convicted the company, who appealed to quarter sessions.

By reg. 26: "Every distributor shall ensure that every vessel (including the lid) used for containing milk shall, immediately before use by him, be in a state of thorough cleanliness."

The recorder found that the appellant company carried on business as milk retailers in and around the city of York, and was a milk

distributor within the meaning of the regulations. The company had a contract with the York "A" and Tadcaster Hospital Management Committee under which it had undertaken to continue to supply pasteurized milk in bottles to certain hospitals in the area, including a hospital known as The Grange, York. Next door to the appellant company a business of wholesale dairymen was carried on by a company referred to as York Producers, Ltd., and the appellant company had arranged that for a consideration York Producers, Ltd., would supply, bottle, and deliver all the milk that might be required for delivery to The Grange. York Producers, Ltd., purchased the necessary milk from the Milk Marketing Board, and then cleansed, pasteurized and bottled it on their own premises, using their own bottles, and under a contract with British Road Services, caused the bottles to be delivered to the hospital. From the time when the milk was received from the Milk Marketing Board to the time when it was delivered to the hospital no servant of the appellant company in any way touched the milk or the bottles in which it was put. On September 11, 1950, a bottle containing milk was delivered to The Grange pursuant to the contract between the appellant company and the hospital management committee, and pursuant to the procedure outlined above. That bottle when delivered was not in a state of thorough cleanliness in that there was a light fawn coloured marking down the side and inside of the bottle. The company's appeal was dismissed.

Held, that reg. 26 was one of a group of regulations made to ensure that milk delivered to the customer should be as clean as possible and by it an obligation was put on the distributor to assure the thorough cleanliness of all vessels used in connexion with the milk; that, applying the principle laid down in *Mousell Bros.* v. *London and North-Western Railway* (81 J.P. 305), the legislation in question had the effect of imposing an absolute duty on a principal so that he would be liable for the acts of his servant or agent or a person to whom he had chosen to delegate his duties, acting within the scope of their authority. The appellant company had, therefore, been rightly convicted and the appeal must be dismissed.

Counsel: *Hylton-Foster, K.C.*, and *Alastair Sharp* for the appellant company; *Ahern* for the respondents.

Solicitors: *Ridsdale & Son*, for *Crombie, Wilkinson & Robinson*, York; *Sharpe, Pritchard & Co.*, for *T. C. Benfield*, York.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

MEEK *v.* POWELL

January 24, 1952

Quarter Sessions—Appeal from court of summary jurisdiction—Power of quarter sessions to amend summons—Summary Jurisdiction Act, 1879 (42 *and* 43 *Vict., c.* 49), *s.* 31, *as substituted by Summary Jurisdiction* (*Appeals*) *Act*, 1933 (23 *and* 24 *Geo.* 5, *c.* 38), *s.* 1 (1).

CASE STATED by Monmouthshire Quarter Sessions.

Two informations were preferred by the prosecutor, Meek, before a court of summary jurisdiction at Pontypool charging the defendant, James Abraham Thomas, "for that he, on May 10, 1951, at Pontypool, unlawfully sold to the Milk Marketing Board for human consumption certain milk to which had been added water, contrary to the Food and Drugs Act, 1938, s. 24." The defendant was convicted and he appealed to Monmouthshire Quarter Sessions against the convictions on the ground that the summonses were defective in that they charged him with an offence contrary to a section of a statute which had previously been repealed. Quarter sessions held that they had no power to entertain an application by the prosecutor to be allowed to amend the summonses and allowed the appeal, and the prosecutor appealed to the High Court against that decision. Section 24 of the Act of 1938 was repealed by s. 36 and sch. V of the Food and Drugs (Milk, Dairies and Artificial Cream) Act, 1950, and was re-enacted by s. 9 of the latter Act.

Held, that, though a court of summary jurisdiction in such a case could, if the defendant did not object, direct a summons to be amended forthwith, or adjourn the case for amendment, or dismiss the summons and leave the prosecution to charge the offence under the correct enactment on a fresh summons, it had no power to amend the summons after conviction; under s. 31 (1) (vii) of the Summary Jurisdiction Act, 1879 (as substituted by s. 1 (1) of the Summary Jurisdiction (Appeals) Act, 1933), quarter sessions could only exercise any power which the court of summary jurisdiction might have exercised; and, therefore, quarter sessions had no power to allow any amendment of the information after the conviction, and were bound to quash the conviction.

Counsel: *A. G. Davies* for the prosecutor; *Peter Underwood*, for the defendant.

Solicitors: *Gibson and Weldon* for *Everett and Tomlin*, Pontypool; *T. G. Jones & Co.*, for *R. G. Davies*, Abergavenny.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

PROBATE, DIVORCE AND ADMIRALTY DIVISION

(Before Lord Merriman, P., and Karminski J.)

ABSON *v.* ABSON

January 15, 1952

Justices—Maintenance—Discharge of order—Adultery by wife after dissolution of marriage—Preferable jurisdiction of Divorce Court—Summary Jurisdiction (*Married Women*) *Act*, 1895 (*c.* 39), *s.* 7.

On November 29, 1944, justices granted the wife an order for maintenance against her husband on the ground of his desertion. In September, 1948, she obtained a decree for the dissolution of her marriage on the ground of the same desertion. In February, 1951, the husband applied to the justices, under s. 7 of the Summary Jurisdiction (Married Women) Act, 1895, to discharge the order of November 29, 1944, on the ground that within the preceding twelve months the wife had committed adultery with one R, a married man. The justices found that the wife had had sexual intercourse with R, but doubted whether this constituted an "act of adultery" within s. 7, she at the material time having ceased to be a married woman. Treating that question as irrelevant, they discharged the order on financial grounds.

Held, in the circumstances of the case the justices should have exercised their discretion to discharge the order on the ground that the wife should be left to seek an order for maintenance in the Divorce Court since that court was free to consider all the circumstances of the case and to assess the true bearing of every part of the wife's conduct, whereas, under s. 7 of the Act of 1895, on proof that the wife had committed an act of adultery, the justices were bound forthwith to discharge the order.

Per KARMINSKI, J.: The true test whether, when the wife had intercourse with R she committed adultery, she being then unmarried, is: Was she then dishonouring or defiling her own marriage bed or that of R? She, being a single woman, could not be dishonouring or defiling her own marriage bed, but R was married, and, if she had intercourse with him, she was dishonouring or defiling the marriage bed of him and his wife, and so she was committing adultery. The justices having found that she had had sexual intercourse with R, it followed that, in effect, they had found that she had committed an act of adultery within s. 7.

Counsel: *J. Stirling* for the wife. The husband was not represented.

Solicitors: *Ward, Bowie & Co.*, for *James A. Lee & Priestley*, Bradford.

(Reported by G. F. L. Bridgman, Esq., Barrister-at-Law.)

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 13.

THE SALE OF INTOXICATING LIQUOR AT AN HOTEL WITHOUT A LICENCE

A limited company owning an hotel appeared before the Scarborough Magistrates to answer a charge of selling intoxicating liquor without a licence, contrary to s. 65 of the Licensing (Consolidation) Act, 1910.

For the prosecution, it was stated that a police sergeant visited the hotel one evening, accompanied by a woman police officer and two other people. A dance was in progress, and there were about nineteen tables round the floor. The sergeant noticed that there was intoxicating liquor at some of the tables and as soon as his party sat down at a table they were approached by a waiter and asked if they wanted a drink. They ordered two whiskies and two gins and a bottle of tonic water, and paid 10*s.* 9*d.* Later they had another round of drinks—a beer, an advocat, a gin and a whisky—and paid 11*s.*, and later still they were served with a beer and a whisky and a plate of sandwiches for which they paid 8*s.*

During the whole time that the police sergeant and his party were in the ballroom, waiters were serving drinks at various tables and accepting payment for them.

At about 9.50 *p.m.*, the sergeant left the ballroom with a view to

finding out who was in charge of the hotel, and in the adjoining room he saw a dispense bar which was well stocked with drinks of different kinds.

In the kitchen adjoining the dispense bar he found one of the directors of the company who said he was in charge. He admitted that he had no licence to sell the drinks and when asked to accompany the sergeant to the dance floor said: "You have all the evidence you want. You won't need me."

The names and addresses of all people who had intoxicating liquor in front of them were then taken, and it was found that twenty-seven out of the seventy in the ballroom had drinks.

The orchestra leader demonstrated his sense of humour by getting the band to play "If I'd known you were coming I'd have baked a cake," followed by "If you want to know the time ask a policeman." The police sergeant in turn showed that he too had a sense of humour when, as he left the premises, he asked the band to play "Will ye no' come back again."

The chairman asked the police sergeant if it was necessary for him to have acquired such expensive evidence, and the sergeant replied that he was anxious to ascertain what kind of drinks were being served!

For the defendant company, who pleaded guilty, it was stated that the case afforded a good example of how a first wrong step could lead to further slips. At first waiters were sent out to buy drinks when people ordered them. This was legal but was found to be inconvenient, and accordingly it was thought to be a good idea to get in some drink which would be available when people wanted it. From there it was easy to reach the stage at which waiters were asking people if they wanted a drink.

The chairman stated that the court regarded the case as a flagrant breach of the law. They imposed the maximum fine of £50 for a first offence and ordered the company to pay £10 10*s*. costs.

COMMENT

It will be recalled that the ambit of the section extends beyond the offence of selling intoxicating liquor without holding a licence, and prohibits in addition the holder of a justices' licence selling intoxicating liquor at any place except that for which the justices' licence authorizes him to hold an excise licence for the sale of that liqour.

The section provides for heavy penalties in the event of a conviction, for in the case of a first offence one month's imprisonment may be imposed in lieu of a maximum fine of £50 and in event of a second offence imprisonment for three months or a fine of £100 may be imposed and upon any subsequent conviction the offender is liable to six months' imprisonment or a fine not exceeding £100.

In addition to the penalties referred to above the section provides that if the offender is the holder of a justices' licence he shall, upon a second or subsequent conviction, forfeit the licence, and there is authority for the statement that this forfeiture is not a matter of discretion in the justices, for the provision is mandatory.

In considering these penalties it is to be remembered that by s. 101 of the Act a conviction more than five years old is not to subject a person to an increased fine or to any forfeiture.

Subsection 4 of the section provides in addition that upon a second conviction, the court may disqualify the offender for holding a justices' licence for a term not exceeding five years, and if the conviction is for a subsequent offence, the disqualification may extend to the lifetime of the offender.

Subsection 5 gives a discretion to the court where the offender is the holder of a justices' licence, to order the forfeiture of all intoxicating liquor found in the possession of the person convicted.

This provision must be read in conjuction with s. 82 (2) of the Act, which provides that where a search warrant has been issued for the detection of liquor sold or kept contrary to law, in the event of the owner or occupier of the premises being convicted of an offence under s. 65 the intoxicating liquor found which the offender was not authorized to sell by retail, *shall* be forfeited.

In the case reported above, no order for forfeiture could be made because the offender was not the holder of a justices' licence and therefore the discretionary powers conferred by s. 65 could not be utilized, and as no search warrant had been granted the mandatory powers of forfeiture conferred by s. 82 and which apply to any offender whether the holder of a justices' licence or not could not be invoked.

(The writer is indebted to Mr. R. Horsman, clerk to the Scarborough Justices, for information in regard to this case.)

R.L.H.

No. 14.

A FAILURE TO PAY INSURANCE

Two men, now employed as travellers, appeared at Swansea Magistrates' Court after they had been arrested on warrants to answer charges laid under s. 2 (6) of the National Health Act, 1946, of failing to pay contributions for which each of them was liable as a self employed person, and also for failing to pay contributions in respect of a person employed by them.

For the prosecution, it was stated that defendants had been in business as shop fitters and had employed a number of people, one of whom was the employee, the subject of one summons.

In respect of six men employees and one woman, the arrears totalled £46 and there were also arrears of £32 each in respect of defendants' liabilities. Deductions had been made from wages of the staff, but the contributions had not been forwarded.

For the defendants, who pleaded guilty, it was stated that they started business in 1949 with very little capital. They had no one supervising administrative affairs and the offences were "sheer carelessness."

The business had been closed down in September, 1950, and since that date defendants had worked as travellers, and were each earning about £10 a week.

Each defendant was fined £10 (the maximum) and ordered to pay up the arrears of contributions.

R.L.H.

PENALTIES

Plymouth—January, 1952—attempting to avoid Customs' Duty upon 114,200 cigarettes—fined £1,000. Defendant, a thirty-one year old Finnish radio operator, brought the cigarettes from his ship to Fowey to dispose of them. The offence was discovered by a police constable who shone his torch through the window of a taxi at 2.30 *a.m.* Total value and duty sued for £2,685. The haul represented one of the largest finds of un-Customed cigarettes ever made in this country. Defendant sentenced to twelve months' imprisonment in default of payment.

Sodbury—December, 1951—stealing a wringer and other equipment value £32 from his employees—fined £75. Defendant, a thirty-eight year old store-keeper, had been employed as chief store-keeper for several years. He admitted having taken the wringer home piece by piece and built it for the use of his wife.

North London Magistrates' Court—December, 1951—driving a police car without due care and attention—fined £2. To pay £2 2*s*. costs. The car destroyed a horse-drawn cart.

Bristol—December, 1951—(1) stealing four blank cheques, (2) obtaining £22 by means of a forged cheque—fined £25. Defendant, a woman of forty with thirteen children and earning £1 16*s*. a week, was given twelve months to pay and told that her husband ought to help her pay the fine.

Oxford—December, 1951—leaving a bus on two occasions without paying the fare with intent to defraud—fined £2 10*s*. each offence and to pay £4 8*s*. costs. Defendant, on six occasions in all, told a bus conductor he had no money. His name was taken and a ticket issued but when sent postcards later reminding him of the amount due he failed to make any response.

Cardiff—December, 1951—(1) driving while under the influence of drink, (2) no licence, (3) no insurance policy—one month's imprisonment.

Cardiff—December, 1951—aiding and abetting the above offences—one month's imprisonment. Both defendants had clean records and both were disqualified from driving for three years.

Oxford—December, 1951—failing to notify change of ownership of a motor-cycle—fined £2.

Carmarthen—December, 1951—stealing forty spruce trees from a Forestry Commission plantation in company with two other persons unknown—fined £50 and to pay £12 10*s*. compensation and £1 13*s*. costs. Defendant, a fruiterer, took the trees in a lorry, which was later seen to enter Llanelly market.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

Before Public Business in Parliament was adjourned until after the late King's funeral, the Secretary of State for the Home Department, Sir David Maxwell Fyfe, introduced the "Licensed Premises in New Towns Bill."

This is described in the Short Title as a Bill "to repeal so much of the Licensing Act, 1949, as provides for State management of the liquor trade in new towns; to make provision as to the grant of new justices' licences, and the removal of justices' licences, for or to premises in new towns in England and Wales and as to the grant of new certificates and the renewal of certificates in respect of premises in new towns in Scotland."

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Tuesday, February 5

CINEMATOGRAPH BILL, read 1a.

DENTISTS BILL, read 2a.

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

VEHICLES (EXCISE) ACT, 1949

I was interested in the inquiry from your learned correspondent JOON at P.P. 17 at p. 48, *ante*, about serving a notice under s. 113 (3) of the Road Traffic Act, 1920, on the registered owner of a vehicle. I think he must have overlooked s. 15 (3) of the Vehicles (Excise) Act, 1949, which is in similar terms and gives the authority he requires where the owner of a vehicle does not admit use without a licence.

Yours faithfully,
H. D. PATERSON.
Local Taxation Officer.

County Council of Middlesex,
Local Taxation Department,
Middlesex House,
20 Vauxhall Bridge Road, S.W.1.

[We are obliged to our correspondent who has drawn attention to this point. The difficulty mentioned in the Practical Point referred to is met by the provisions of s. 15 (3) of the Vehicles (Excise) Act, 1949, as our correspondent states, and provides that the owner of a vehicle, when it is alleged that it has been used without a valid licence, shall give information to a chief officer of police or to a county council as to the identity of the driver or of any person using the vehicle.—*Ed., J.P. and L.G.R.*]

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

FOOD STANDARDS PROSECUTIONS

May I be allowed a further word in view of Mr. H. A. H. Walter's kind foot-note to my previous letter (at p. 25, *ante*) upon his article. As I understand your learned contributor's views, he propounds two things :

(*a*) prosecution under s. 3 of the Food and Drugs Act, 1938, in respect of food not complying with a prescription as to the composition of food under the Defence (General) Regulations, are bad in law ; and

(*b*) they are also absurd.

As to (*a*) and my previous comments upon it, Mr. Walter now says " that it is wrong for a public analyst to base his opinion on a changeable temporary standard prescribed under the Defence (General) Regulations . . ." What does a public analyst base his opinion on when there is no standard under the Food and Drugs Act ? Surely upon his opinion of the ingredients of which the particular article is commonly compounded and which is generally expected by the purchaser. This opinion is based upon the description of the article and his experience of the constituents generally found in articles so described. I should have thought that since it has been illegal to make beef sausages with a less meat content than fifty *per cent.* for the past three years and this prescription has been well publicized, a minimum standard of fifty *per cent.*, in this case, for compliance with s. 3 of the Food and Drugs Act, would have been unchallengable. I agree that a public analyst would not be justified in accepting a prescription in a Defence (General) Regulation Order merely on the grounds of its existence and from the date of its operation. The tests are, surely, does the prescription effect a standard of composition to which the public has become accustomed and/or of which official publicity has made it aware ? I think that in, for example, the case of beef sausages, a public analyst's certificate to the effect that a sample contained twenty *per cent.* total meat equivalent, without an opinion being expressed as to a standard of minimum total meat content, would fully justify a summons, *ceteris paribus*, under s. 3 of the 1938 Act. But, in fact, it seems the duty of the public analyst to give an opinion in this regard and I do not see what alternative he has but to measure the deficiency against fifty *per cent.* in such a case.

Re (*b*), I do not wish to add to my letter except to reiterate that I still think it would be wrong for a "food and drugs" authority not fully to enforce the Acts, as is its duty by s. 65 of the 1938 statute. As to the matter of fair sampling of sausages I do not agree that there is any difficulty and allowing that there is I find Mr. Walter's conclusion very unsatisfactory as a reason for not carrying out one's duty, as I see it. If a sample one pound of sausages is bought, each sausage divided into three equal parts, and one part of each sausage so divided put into a sampling jar and the usual formalities otherwise observed, I suggest that a fair and lawful method has been adopted. In the course of some experience in prosecuting such cases I have had many arguments but never one upon the fairness of such a sampling method.

Yours faithfully,
" EARNEST READER."

The Editor,
Justice of the Peace and
Local Government Review

DEAR SIR,

HOROLOGICAL INEXACTITUDE ?

At p. 2, *ante*, you apparently doubt whether the Mad Hatter had any regard for the March Hare's watch. But surely the watch belonged to the Hatter himself ?

Yours faithfully,
N. R. TEMPLE.

London,
January, 1952.

[Our learned correspondent's statement is correct, his imputation upon our exactitude is mistaken. We had taken the precaution of verifying the ownership of the article before mentioning it. We needed an illustration of indifference to another person's property or interests ; it would not have been correct to accuse the Hare of indifference to the well-being of the Hatter's watch, since it was he who took care that the best butter was put into it. The Hatter, on the other hand, is not shown to have cared whether the Hare possessed a watch at all.—*Ed., J.P. and L.G.R.*]

PERSONALIA

APPOINTMENTS

Mr. Lionel Charles Rysdale, deputy clerk and solicitor to the Solihull U.D.C., has been appointed clerk to the Sodbury R.D.C. Mr. Rysdale was articled to the town clerk of Lincoln and has held previous appointments as assistant solicitor to the Lincoln city council and deputy town clerk to Royal Leamington Spa.

Mr. H. Gardener Wheeler has been appointed clerk to the justices of the petty sessional division of Hythe, Kent. He was admitted a solicitor in 1933.

Mr. Norman Saddler has been appointed assistant official receiver for the bankruptcy district of the county courts of Manchester, Salford, Ashton-under-Lyne and Stalybridge, Bolton, Oldham, Rochdale and Stockport ; for the bankruptcy district of the county courts of Preston, Blackpool, Blackburn and Burnley ; and also for the bankruptcy district of the county courts of Hanley and Stoke-on-Trent, Crewe and Nantwich, Macclesfield, Stafford, Shrewsbury and Newtown. Mr. Ronald William Francis Pagan has been appointed assistant official receiver for the bankruptcy district of the county courts of Canterbury, Rochester and Maidstone.

RESIGNATION

Mr. E. C. Fortescue, clerk to the Chadlington magistrates since 1927, has resigned. His successor is Mr. R. C. Huntriss.

OBITUARY

Mr. Oliver Bell, J.P., secretary-general of the Magistrates' Association, died on February 8 at Carshalton, Surrey. He was fifty-four.

NOTICE

SPECIAL UNIVERSITY LECTURES IN LAWS

A lecture on Equality and Privilege in the Law, by Professor H. G. Hanbury, D.C.L., Vinerian Professor of English Law and Fellow of All Souls College, Oxford, will be given at King's College, Strand W.C.2, at 5.30 *p.m.* on Thursday, March 6, 1952. The chair will be taken by the Rt. Hon. Lord Porter. The Lecture is addressed to students of the University of London and to others interested in the subject. Admission free, without ticket.

JUGGERNAUT AND JEHU

Casualties on our roads continue to mount; more than 19,000 persons were killed or injured in traffic accidents in November, 1951. This holocaust to the Demon of Speed has not been checked by the latest experiment in pedestrian crossings, which appears to have made confusion worse confounded. The Minister of Transport continues to approve "schemes" under the Road Traffic Acts; our roads, already scarred with beacons, stripes and studs, are now breaking out into a new rash of "zebra" markings (the legality of which has been contested in several recent cases in the courts), but the toll of human lives shows no sign of diminution.

The stories, current in the West, of thousands of worshippers being crushed to death beneath the giant car of Juggernaut (a local title of the God Vishnu) in the north-eastern region of India known as Orissa, have been grossly exaggerated, but at their worst the fantastic horror of these fables falls short of the reality of the problem which Great Britain has to face. It is a strange anomaly that science, which has in so many ways successfully protected man from natural dangers—from drought and famine and disease—should stand helpless before a threat of decimation by man-made appliances. The legend of Frankenstein is being enacted before our eyes; the machine to which man has given a synthetic life of its own has got out of control and bids fair to destroy its creator.

If the problem were not so tragic it would be ridiculous. On the one hand there is this extraordinary craze for Speed, for travelling faster than anybody has travelled before, as though speed in itself conferred some benefit on mankind. New and ever newer devices are invented for moving on the ground, through the water and in the air at stupendous rates; tests are held and prizes awarded to the driver or pilot who can extract a few more kilometres an hour from aircraft or car; and still the inventors cry "Faster! Faster!" like the Red Queen in *Through the Looking-Glass*—and with less reason, since in her country it was necessary to travel very fast to remain in the same place. On the other hand the streets of our great cities are throughout the day congested with large and powerful motor-vehicles moving in a continuous procession at less than walking-pace, creating obstruction, danger and delay—a store of pent-up energy producing nothing but waste, frustration, evil odours and nerve-wracking noise. Except on the main highways and the country-roads the use of a motor-vehicle in working hours is a liability rather than an asset, and the Londoner going about his lawful occasions is forced to choose between the alternatives of walking the streets with his life in his hands, or diving underground like a Troglodyte into the oppressive atmosphere and sardine-like constriction of the "Tube." To such straits have our law-abiding population been reduced by the blessings of modern civilization.

The apostle of quietism, like the philosopher described by Lucretius, stands peaceably upon the vantage-ground of wisdom and looks down upon the erratic wanderings, the scamperings and scuttlings, hither and thither, of thousands of harassed beings seeking their way gropingly through the maze of life. Such an observer, watching the treatment of the pedestrian at the hands of drivers (particularly the motor-cyclists), once they have succeeded in extricating themselves from the tangle of traffic in the narrow city streets and feel themselves free from physical restraint, must frequently be inclined to echo the words in the ninth chapter of the Second Book of Kings:

"And the watchman told, saying, He came even unto them and cometh not again: and the driving is like the driving of Jehu the son of Nimshi: for he driveth furiously."

It is interesting to speculate upon the psychological reasons behind the bad manners and anti-social behaviour of those who turn the Queen's highway into a death-trap for their fellow-citizens. The observer cannot but be reminded most forcibly of the words of Lord Acton—"All power corrupts; absolute power corrupts absolutely." It is not merely to political matters that this aphorism applies; its aptness is manifest in all human activities, and not least so in this matter of slaughter on the roads.

> "O it is excellent
> To have a giant's strength but tyrannous
> To use it like a giant."

History has shown how persons of a weak and pliable nature, placed by some trick of fortune in command of an army, or at the head of a popular movement, and elevated to the imperial purple or the black uniform of dictatorship, frequently degenerate into cold and merciless tyrants; even once-benevolent rulers have had their heads turned by excess of power and have appeared to change their characters almost overnight. In the same way something destructive seems to happen to the ethical outlook of the immature and unimaginative citizen who finds himself seated, in unrestrained exuberance, behind the controls of that potent lethal machine which is the modern motor-vehicle; in that dominating position he is capable of all kinds of atrocious behaviour which in his domestic life he would never dream of committing. He is in the grip of the Nietzschean "will to power"; moderation, courtesy and consideration for others are replaced by swollen pride, arrogance and egotism. In extreme cases the driver is afflicted by a species of megalomania in which the pedestrian is as far outside his moral world as the guinea-pig is outside that of the vivisectionist. If this diagnosis be sound, the remedy would appear to lie in regarding dangerous or reckless driving as a symptom of paranoia, and to place those afflicted by such mental disease under psychiatric treatment. Our legislators and magistrates may take a leaf out of Samuel Butler's book and, instead of fining or imprisoning, put such offenders in the hands of the "straighteners," as the enlightened inhabitants of *Erewhon* were used to do.

Finally, lest the motorist should have good cause for complaint that these suggested reforms are biased and one-sided, it would be well that the case of the inconsiderate pedestrian should also receive attention. Persistence in what is colloquially called "jay-walking" should be regarded as a species of suicidal mania and defined as such by Act of Parliament. Only by some such drastic action in the legislative and judicial fields is the appalling total of road-casualties likely to be reduced. If these methods fail of their object, the only alternative is to follow the example of the Erewhonians in abolishing, under heavy penalties, the use of machines in general and the internal-combustion engine in particular, and relegating the obsolete, rusty relics of the murderous machine-age to the museums.

A.L.P.

TO MY LAW BOOKS

If all the hours were counted
I should have spent with you,
To what they'd have amounted
I only wish I knew.

J.P.C.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Administration of insolvent estate—*Covenant to build road—Enforcement.*

Before 1948 a builder, B, laid out some land for development in plots. He sold half the plots to various owners covenanting with them to build a service road according to certain specifications when bungalows had been built on all the plots intended to be developed. Before the work was completed, B died. It is found that his estate will be insolvent if the work now required by the covenant has to be done.

(*a*) Are the owners of the plots sold priority creditors against unsecured creditors of the estate?

(*b*) Assuming that the sum due for carrying out the work covenanted to be done to the service road can be ascertained, what remedy, if any, have the owners of the sold plots against the estate of the builder or anybody else? DEM.

Answer.

(*a*) In our opinion, no.

(*b*) It seems that the owner of a plot can prove in the bankruptcy for the value when ascertained of the work which ought to have been done: Bankruptcy Act, 1914, s. 30 (8) as applied by s. 33 (5).

2.—Bastardy—*Single woman.*

A, a spinster, has an illegitimate child to B. She makes no application for an order against B for the maintenance of the child X, but until recently B has paid weekly sums for the maintenance of X.

Some three years after the birth of X, A married C by whom she had another child, Y. Subsequently A separates from C and applies to the magistrates for maintenance on three grounds—desertion, failure to maintain and cruelty by C.

She fails on all three grounds since it is obvious to the bench that C is still fond of A, has never ill-treated her and is anxious for her to return to him, the real trouble being that while her standard of life is not unreasonable it is much higher than that of C or than anything that C can offer. While refusing these applications the bench however make an order under the Guardianship of Infants Act for the maintenance by C of Y. This order is still in effect and is being obeyed. It has been in force for three or four years.

Now B has failed to continue his payments for the maintenance of X and A wishes to make an application in bastardy against him.

The question at once arises as to whether or not she is a single woman. She has neither a divorce, a separation, nor even a maintenance order: it can hardly be said her husband has left her for he is still anxious for her to return and periodically comes to see her. (He is living and working about two hundred miles from her home.) As to whether she deserted him cannot be proved for this question was not before the court nor is it likely to be before it.

Would evidence of non-access to her husband (*a*) by her alone or (*b*) by her, supported by relatives or neighbours, constitute proof she is a "single woman"?

Your learned opinion will be much appreciated. SILEX.

Answer.

As the child was born before the marriage of the mother, there is no question of proving non-access in order to rebut a presumption of legitimacy, and what it is sought to prove is that the spouses are living separate and apart. The decided cases do not go so far as to say that in such circumstances as these the mother is a single woman, but, as has been pointed out, the *ratio decidendi* of certain of the decisions has disappeared with the abolition of the liability of a man to maintain his wife's children. These cases may be reviewed when opportunity arises for the High Court to pronounce upon them, and, with some hesitation, we consider that justices may now make an order when they are satisfied by strong evidence that the woman is living apart from her husband in circumstances which satisfy them that the separation is genuine and likely to be permanent so as to bring the wife within the meaning of the expression "single woman." In the present case, the evidence may possibly satisfy the justices that the wife has deserted her husband and has thereby repudiated her married status.

The general question is discussed at 115 J.P.N. 796, and at 112 J.P.N. 550.

3.—Building Materials and Housing Act, 1945, s. 7—*Housing Act, 1949, s. 43—Restricted selling price—Local land charge—Certificate erroneously given.*

W, a builder, was in 1939 erecting a row of four terrace houses, two were completed and two commenced, the foundations being laid and the outside walls up to ground floor window level being erected. Work was then stopped owing to wartime restrictions. At the end of 1945, W made application to the local authority to complete the two houses and a building licence was granted subject to conditions that each house should not be sold at a price exceeding £1,140 nor let at a figure exceeding 25*s. p.w.* excluding rates. This restriction was entered on January 1, 1946, in Part IV of the Local Land Charges Register kept by the local authority. In April, 1946, when nearing completion, W sold the first house to R and later in July, 1946, he sold the second house to J for £1,140, in each case undertaking to complete the house. The licence was not seen by the purchaser and W, apparently under the impression that the restriction only applied to him, did not advise the purchaser or his solicitors of the restriction. Prior to completion on September, 1946, the solicitors acting for J searched in the Local Land Charges Register, clearly identifying the property, but the clerk to the local authority (who has now left the authority) issued a certificate which did not reveal or contain any reference to the entry in Part IV of the restriction on selling and letting price. J borrowed part of the purchase money on the security of the property from a bank. Having negotiated for the purchase of another property after five years' residence, J arranged to sell his house and, unaware of the restriction, started to offer it for sale at a considerably increased figure. J mentioned it to the present clerk of the local authority, who immediately advised him of the restriction, but, although aware of the incorrect certificate, has taken no further steps with regard to it. J and the bank now state they were misled by the clear certificate of the local authority in believing that the property was worth considerably more than it is, on the strength of which the bank advanced part of the purchase money whereas, in fact, the property cannot be sold at more than £1,140 until after December, 1953, the expiry, up to the present, of s. 7 of the Act of 1945.

Although all properties erected since the war were subject to the grant of a licence, the question of a restriction was not, apparently, considered as this house had been partly built before the war and was completed afterwards, and also it was known that a house in the same area, built at the same time as this house was completed, had no restriction on it, which is now confirmed.

(*a*) What remedy has J and/or the bank, and against whom in respect of this untrue local land charge certificate? and

(*b*) Has the local authority any power to vary or delete the restriction in the licence and consequently the entry in Part IV of the Local Land Charges Register, other than the power to vary given by s. 43 (5) of the Housing Act, 1949? B.D.

Answer.

The facts are rather like those in a case we discussed at 115 J.P.N. 681, though the present case is less complicated. The erroneous certificate given to J as a prospective purchaser is conclusive in his favour (s. 17 (3) of the Act of 1925) which in this context must mean, we think, that he would have a defence if prosecuted for selling at more than the restricted price. But it would not, in our opinion, protect the bank if they sold as mortgagees, nor would it avail a purchaser from J or from the bank, so that commercially speaking the certificate is valueless to J. On your specific questions:

(*a*) In our opinion J has a right of action against the former registrar personally, to the extent that he can prove that he has lost. The bank seem to have no cause of action. They could have made their own search, and anyhow they surely did not lend J on security of the house more than he paid for it, so they have lost nothing.

(*b*) No. (Nor is the present registrar called upon to do anything—in fact he cannot do anything—about the incorrect certificate.)

4.—Game—*Ground game—Shooting rabbits at night.*

I should value your views on the following described incident which has caused much discussion and divergent views:

Part of a large country estate is occupied by a tenant farmer but the owner retains his sporting rights over the land. During the night (10 *p.m.*) police officers go to the land occupied by the tenant farmer and find two men travelling round a field in a motor lorry. They are shooting rabbits with the aid of the vehicle's headlamps. When interviewed they state that the estate owner has sold the shooting rights to them and produce a document to this effect. This is later confirmed by the estate owner. The tenant farmer has no knowledge of this and draws attention to the deep tracks that the lorry has made round his field.

Different opinions have been expressed as to whether or not any offences have been committed in these circumstances and discussions have centred round the provisions of s. 6 of the Ground Game Act,

1880. It is argued that no offences have been committed as the owner of the land and persons authorized by him have the right to shoot ground game even by night. In this connexion reference has been made to the cases of *Smith* v. *Hunt* (1885) 54 L.T. 422; *May* v. *Waters* [1910] K.B. 431 and *Leworthy* v. *Rees* (1913) 109 L.T. 244, although these cases relate to offences against the latter part of s. 6 of the Act of 1880 which has now been repealed but re-enacted by the provisions of the Prevention of Damage by Rabbits Act, 1939.

Your opinion on the following points would be greatly appreciated:

1. Were any offences disclosed in the incident quoted?

2. Can a landowner or any other person use firearms by night for the purpose of killing ground game?

3. Can the decisions made by the courts in 1910 and 1913, relating to the setting of spring traps, be applied to cases involving the use of firearms by night for the purpose of killing and taking ground game? SHO.

Answer.

In *Stone's Justices' Manual* (1951) a note to s. 6 as amended states: "The prohibition does not extend to the owner of the land, whether or not he be in occupation thereof, or to any person not being in occupation of the land, who is entitled by grant or licence, not necessarily by deed, from the owner to kill hares or rabbits," and cites the cases referred to above. In our opinion the answers are as follows:

1. Not on the facts as stated.
2. Yes, see the first part of our reply.
3. Yes, they appear to apply to the section as a whole.

5.—Highway—*Implied dedication—Statutory body.*

A canal disused since 1944 passes through this urban district. Over certain parts of the towpath the public have enjoyed an unrestricted passage for upwards of twenty years, but the Docks and Inland Waterways Executive state that it is the duty of their watchmen or lock-keepers to prohibit persons from using the canal towpath as a footpath. Particular inquiries have been made but no evidence has been found that the towpath has actually been closed to the public at any time during the past twenty years. Recently, however, an entrance to the towpath has, upon the instructions of the Executive, been walled up, thus depriving the public of access to the canal. It is submitted that from the fact of the uninterrupted use of the towpath over a period of at least twenty years may be properly inferred an intention to dedicate such land for public use. Reference is made to 16 *Halsbury* (2nd edn.) p. 222, para. 268 and *Grand Junction Canal Co.* v. *Petty* (1888) 52 J.P. 692.

Will you please advise whether or not you find the circumstances related above are analagous to the appeal case mentioned, and whether the public at large have acquired a right of way over this towpath? CAL.

Answer.

The case cited is certainly authority for inferring that a public right of way has been dedicated, but it does not compel this inference. The principle underlying *Arnott* v. *Whitby* (1909) 73 J.P. 369 should be considered and, where dedication by a statutory body is alleged (particularly dedication implied from that body's neglect to interfere during a period when it was itself not actively using its property), the relevant special Acts would, as in the *Whitby* case, have to be examined.

6.—Highway—*Road Transport Lighting Act*, 1927—*Cul de sac open in fact to public but not as of right.*

Can a backway (which is a *cul de sac*) some fourteen feet in width and about 230 feet in length be considered a road within the meaning of the Road Transport Lighting Act, 1927? The entrance to the backway is open from a street, not closed at any time by any gateway or other obstruction at the entrance. The way serves the purpose of access to the back gardens of several houses and to a few garages which have been erected on the rear portions of the gardens. The backway is not made up and has not been taken over by the local authority, and it does not lead from one place to another. Dustmen with their carts use it for the purpose of collecting refuse from the houses and it could apparently be (but is not) used by tradesmen. An advertising firm make some small use of it for advertising purposes near the entrance from the street. It appears clear that it is a private right of way for the houses which have their gardens abutting on it and, except as aforesaid, it is probably only frequented by courting couples and not by any other member of the public generally. Cars are however sometimes parked there at night by the persons resident in the houses in question and the police contend that they should have lights on. Against this it is contended that it is purely a private right of way leading nowhere and can be used freely only by the residents of the houses and their licensees who therefore have a right to leave cars there without lights and that all other persons are trespassers. EDE.

Answer.

The Act of 1927 expressly applies to roads which are not highways, so that the absence of public rights is not conclusive. The forecourt in *Bugge* v. *Taylor* (1941) 104 J.P. 467 was much more open to the public than this *cul de sac*, but the argument here for the defence is like that advanced in that case, which is fully shown in our report. The reasoning of the Court in the Scottish case of *Harrison* v. *Hill* [1932] S.C. (J.) 13, adopted by Lord Caldecote, C.J., in the English case, covers this, which is indeed *a fortiori*, since a number of householders have rights of bringing vehicles along the way, and could collide with an unlighted car. On the facts before us we doubt whether the justices can properly find that this is not a road.

7.—Housing Act, 1936, s. 155—*Daily penalty—Fixed sum named in section—Power to mitigate.*

The local authority prosecuted a person for occupying a building in contravention of a demolition order. A fine was imposed, and the local authority are now proceeding under s. 155 (3) of the Housing Act, 1936, for a further penalty, as the defendant continues in occupation. A person who occupies premises the subject of a demolition or clearance order is liable to a fine, on summary conviction, not exceeding £20, and to a further penalty of £5 for every day or part of a day on which the occupation continues after conviction. I am of opinion that the daily penalty of £5 cannot be mitigated in view of the wording of the section. Do you agree? If it had been the intention of Parliament to confer upon justices the power to mitigate the daily penalty, they would surely have said so, and repeated the words "not exceeding" after the words "and to a further penalty of . . ." ALL.

Answer.

Comparison with a number of parallel enactments shows that a daily penalty is frequently (we think usually) stated as "not exceeding" like the primary penalty: *cp.* Public Health Act, 1936, ss. 95 (1), 269 (7) and 288; Local Government Act, 1933, s. 251; P. H. (Drainage of Trade Premises) Act, 1937, s. 11; and ss. 26 (6) and 59 (1) of the Housing Act, 1936, itself. Omission of "not exceeding" for the daily penalty in s. 14 and in s. 155 (3) of this Act might be due to a slip of the draftsman's pen, but the view taken in the query is certainly maintainable both upon verbal comparison with other enactments and upon consideration of the purpose of these two enactments, which is to force the vacation of unfit premises, a purpose which could be defeated if justices imposed a daily penalty so small as to make continuance of the occupation profitable. The general mitigating power conferred by s. 4 of the Summary Jurisdiction Act, 1879, is not applicable, since an offence continuing day by day after conviction cannot be called a first offence.

8.—Husband and Wife—*Proceedings in England when defendant in Scotland—Maintenance Orders Act*, 1950.

A wife has applied for a summons under s. 1 (1) of Maintenance Orders Act, 1950, against her husband who is resident in Scotland. The parties were married in England where the wife resided before marriage. After the marriage the parties went to reside in Scotland where the husband resided, and continued to reside in Scotland where the husband was employed. The parties in or about the month of June, 1951, came to the wife's parents' home in England for a holiday. The day after arrival the husband left saying that he was going to visit friends in England and that he would be returning in a few days. He did not return and subsequently the wife returned to the matrimonial home in Scotland. The husband refused to cohabit with the wife, but an agreement was arrived at whereby the husband was to contribute to the wife's maintenance. The wife who was then pregnant returned to England shortly afterwards and received from the husband moneys for her maintenance. On the birth of the child the payments ceased. The wife is desirous of issuing a summons against the husband for maintenance for herself and the child. Will you please advise whether the justices can issue a summons under s. 1, having regard to the fact that the parties cannot be said to have last resided together as man and wife in England, unless of course the period (one night) they resided together in England whilst on holiday can be regarded as their last residence. SHLJ.

Answer.

We do not think that the parties can, in these circumstances, be said to have last ordinarily resided together as man and wife in England. Their joint residence was in Scotland, and in our opinion the wife must seek her remedy in Scotland.

9.—Land drainage—*Incidence of drainage rates.*

Is *Smith* v. *Smith* [1939] 4 All E.R. 312 still good law. DRAIN.

Answer.

We do not find that the decision has been reviewed in a later case, or reversed by legislation.

10.—Landlord and Tenant—*Flats—Covenant for quiet enjoyment—Uncarpeted floors.*

The local authority have purchased a medium sized three-storey private dwelling-house, and with a minimum of alteration have converted it into three flats which have been let to employees. The tenancy agreements with these employees follow the usual form, and include agreements by each tenant not to use his flat in any manner which may be a reasonable annoyance or nuisance to the other tenants of the building, and an agreement by the landlord for quiet enjoyment by the tenants. A complaint has been received by the occupier of the ground floor flat of disturbance, loss of sleep and annoyance, attributable solely to the fact that the tenants in the flat immediately above have no carpets or covering of any kind on the bare wooden floors of what constituted the bedrooms of the original building. Can the tenants of the ground floor flat require the landlord under his agreement for quiet enjoyment to take reasonable steps to render the floors of the first floor flat in some manner sound-proof, and can any distinction be drawn between the floors over the day rooms and over the bedrooms in the ground floor flat? There is no suggestion of unreasonable user by the first floor tenants or their children. BOX.

Answer.

The covenant not to use in any manner which may be a " reasonable annoyance or nuisance " reads strangely. Is it correctly quoted? We should have expected " in any manner which may reasonably be considered an annoyance or nuisance." Even so, we do not think the circumstances described would be held to be a breach of the covenant, or even the stronger covenant (" any annoyance or nuisance whatsoever ") given in *Woodfall's* precedent for the lease of a flat. It is common enough in such a lease for the tenant to be required to carpet his floors, but it is not a usual covenant in the conveyancing sense; it is therefore one which must be stipulated for expressly if desired. But we do not consider that the tenant of the lower flat can treat the landlord's not having made such a stipulation as a breach of the landlord's covenant, as regards either bedrooms or sitting rooms.

11.—Landlord and Tenant—*Long lease at ground rent—Dwelling-house of low value—Sale of lease—Whether price is a premium.*

In 1946 A leased a plot of land to B for a term of 999 years at a ground rent of £12 10*s. per annum*. In 1947 B erected a bungalow on the land, in which he now resides. The rateable value of the bungalow is £15 and the rent is therefore more than two thirds of the rateable value. B wishes to sell the bungalow.

In view of the provisions of the Landlord and Tenant (Rent Control) Act, 1949, s. 2 (2) your opinion is sought as to whether he can do so. If, in your opinion, such a sale would be tantamount to the charging of a premium, and therefore barred under the Act, can B recover the cost of erection of the bungalow from an assignee under the provisions of s. 2 (4) (*b*) of the Act. LEX.

Answer.

The proportion between rent and rateable value is unusual and it may be that such a case was not intended to be caught, but the better opinion seems to be that s. 2 applies. We are assuming that for practical purposes the ground rent can be regarded as charged upon the bungalow, *i.e.*, that the plot comprises the site of the bungalow and its curtilage. The difficulty about s. 2 (4) (*b*) is that it speaks of " structural alteration of the dwelling-house," whereas what B has altered is the plot of land. We cannot with any confidence advise reliance on that paragraph.

12.—Landlord and Tenant—*Notice to quit—Whether required by or authorized under statute.*

At the end of your article " The Vanished Tenant " at 115 J.P.N. 213, you call attention to s. 167 of the Housing Act, 1936, as giving facilities for serving a notice to quit, amongst other species of notice. In reply to P.P. 5 at 115 J.P.N. 577, you speak of using s. 167 for a notice which is to found proceedings against a person who holds over after notice to quit, but is not himself the ex-tenant. Section 167, however, speaks of " a notice, order, or other document required or authorized to be served under this Act," whereas a notice to quit is (if and where required at all) " required by " the common law (or, in the case put to you at 115 J.P.N. 577, by s. 1 of the Small Tenements Recovery Act, 1838), and is not, so far as I can find, " authorized to be served under " the Act of 1936—at least not expressly. Has this aspect been considered? ASTL.

Answer.

We did touch on the doubt which is hinted in this query, at 115 J.P.N. 214, where we said that s. 167 would be stronger in favour of the local authority if, instead of " under," it had said " for the purpose of." But the course we finally advised, a course which we believe has been regularly followed in practice, is supported by *Van Grutton* v. *Trevenen* (1902) 87 L.T. 344, where (in relation to the provisions then in force on the subject of agricultural holdings) it was decided, after argument by leading counsel directed specifically to this point, that a notice to quit, though necessary at common law, was " required or authorized under " the statute.

13.—Magistrates—*Practice and procedure—Unrepresented defendant—Evidence or unsworn statement—Explaining the difference to him.*

I shall be grateful for your views on the practice of the court explaining to unrepresented defendants their right to choose to give evidence upon oath, or to make an unsworn statement. I give this explanation and inform the defendant that only witnesses upon oath may be asked questions in cross-examination, or by the court.

I understand it is the practice in some courts for the explanation to include something to the effect that " the courts may give more consideration to sworn evidence." This seems to me possibly to create the impression that an inducement is being held out by the court to the defendant to give sworn evidence, or that an unsworn statement may not receive due consideration. I will admit that often I have noticed defendants to be puzzled by my explanation, however simply it may be put. The fact cannot be ignored that there is a general impression among those connected with the courts that sworn evidence carries more weight than an unsworn statement, but difficulties arise as soon as this impression is put into words. JET.

Answer.

We answered a similar question at 114 J.P.N. 624, P.P. No. 4, and we do not think we can add to what we said there. We refer our correspondent, therefore, to that answer.

14.—Music, etc., licence—*Condition that premises shall not be used for public dancing on Sundays—Contravention—Whether offence is committed.*

My justices, acting for an area which has adopted Part IV of the Public Health Acts Amendment Act, 1890, grant licences under s. 51 of that Act for public music, singing or dancing.

Endorsed on each licence is a so-called " condition " that the premises shall not be kept or used for such purpose on Sundays.

A is now charged before my justices under s. 51 of the Act with contravening one of the conditions upon which his licence is granted in that the licensed premises were used for public dancing on a Sunday.

Counsel for the defendant has taken the preliminary point that the proceedings are wholly misconceived. He argues as follows:

(1) That the offence, if any, is against the Sunday Observance Act, 1780.

(2) That the justices have no power to impose a condition that the licensed premises shall not be used for public dancing on Sundays as that in itself is prohibited by statute. In his opinion, they can only prohibit by condition that which would otherwise be lawful and that the condition so imposed on the licence in question is *ultra vires* and can only be regarded as a reminder to the licensee of a statutory prohibition.

(3) That the licence is a six-day licence only. Therefore A's alleged offence, being committed on a Sunday, cannot be a breach of the licence.

Counsel cited in support of his argument *R.* v. *Hereford JJ., ex parte Newton* [1940] 4 All E.R. 479 ; 104 J.P. 441. That case, however, apparently decides that justices have no power to *remove* such a condition from a licence and it appears to be by inference that such a condition can properly be imposed.

Your valued opinion will be much appreciated.

If it is your view that the case should proceed can the prosecution call evidence to prove that public dancing took place at A's premises on Sundays prior to the date alleged in the information ? OPLEN.

Answer.

Our comments on counsel's arguments are :

(1) We agree that a charge will lie under the Sunday Observance Act, 1780, in respect of which proceedings may now be instituted under the Common Informers Act, 1951, whereby the defendant is liable on summary conviction to a fine not exceeding £100.

(2) Counsel's argument is logical, but we think a Divisional Court might prefer the view that the licensing justices could foresee that the law would be broken in the very respect in which it is now alleged to have been broken, and were entitled to attach a condition to their licence for weekdays designed to have effect that premises which they licensed should not be brought into disrepute by being used in breach of the law on Sundays. On this view, it would be *intra vires* to grant a licence for weekdays, conditional upon the premises being used on weekdays only. Although there is no decision of the High Court to support our view, we think that the justices are entitled to revoke the licence under the provisions of the Public Health Acts Amendment Act, 1890, s. 51 (9), not because the use of the premises for public dancing on Sunday is in breach of the law, but because of a breach of the law on premises which they have licensed for weekdays.

(3) We think it proper, after conviction, to call evidence to prove that the premises were used for public dancing in breach of the condition of the licence on other Sundays : this is relevant on the issue of whether or not the licence should be revoked.

15.—National Assistance Act, 1948, ss. 22, 43 and 56, and Maintenance Orders Act, 1950, s. 4.

The local authority has made two complaints before my justices under the National Assistance Act, 1948, to recover amounts of money granted by way of assistance to a woman under s. 22 of that Act. The first complaint is to recover a sum of money for her own accommodation under s. 22. The second complaint is to recover a sum of money for the maintenance of her three children who were accommodated with her at the same time and this complaint has been made under s. 43 of the Act. By s. 56 of the Act these sums of money granted as assistance are recoverable as civil debts within three years. The assessment was made while she was being provided with the accommodation. Eventually she went to Scotland taking the children with her. Under s. 4 of the Maintenance Orders Act, 1950, the local authority may recover moneys due to them from persons residing in Scotland under s. 43 of the National Assistance Act. The question arises whether the amount due is recoverable under s. 22 only, as the children under subs. (7) of this section are the personal liability of the person by whom the children were accompanied. Section 42 of the Act enacts that a mother is liable to maintain her children but the question in issue is are these children " assisted persons " within the meaning of s. 43, or are they to be assessed by the local authority in one lump sum as assistance given to the mother under s. 22. You will appreciate that under s. 22 no action can be taken in Scotland to recover the amount due from her. ELF.

Answer.

We do not feel confident, but the scheme of the sections seems to us to be that the charge for accommodating accompanied children under s. 21 falls to be recovered by virtue of s. 22 (7) and that s. 43 does not come into the matter.

16.—Probation—*Breach of requirement—Whether an offence—Taking fingerprints—Criminal Justice Act*, 1948, ss. 6 *and* 40.

AB, a youth of sixteen years, is placed on probation for a period of twelve months on a charge of shopbreaking and at that time his fingerprints are not taken. He is summoned to appear before the supervising court for a breach of requirement under s. 6 of the Criminal Justice Act, 1948, but fails to appear. As a result a warrant is issued for his arrest and he comes into custody of the police. A police chief inspector applies for an order for the fingerprints of the probationer to be taken under s. 40 of the Criminal Justice Act, 1948.

I advised the justices that in my opinion this was not an offence within the meaning of s. 40 of the Criminal Justice Act, 1948, and the proper time to apply for such an order was when he was before the court for the offence of shopbreaking. In my opinion s. 6 is a special section setting out the procedure for breach of requirement of a probation order and does not create any offence.

I shall be pleased to have your views on this matter. TROB.

Answer.

We agree with our learned correspondent. It is to be noted that s. 6 (5) states that where a fine is imposed for a breach of requirement it shall be " deemed for the purposes of any enactment to be a sum adjudged to be paid by a conviction." This seems to indicate that it is not a criminal offence, and it is only after a fine has been imposed that the defendant may be dealt with as if he had been convicted of an offence, and the fine recovered accordingly.

17.—Public Health Act, 1936—*Alleged public well.*

We acted recently for the vendor and purchaser of a small farm in a rural area. Situated on the property is a well, and the purchaser proposed drawing water from this well by some sort of pump to the dwelling-house and outbuildings, and applied to the local agricultural executive committee with a view to their carrying out the necessary work for him by contract and procuring the necessary grants for him. The executive committee then learnt from the local rural district council that the well was a public well and that he could use only the overflow for this purpose. Inquiry from the rural district council revealed that they regarded the well as having vested in them under s. 124 of the Public Health Act, 1936, and as being under their control. It appears that their reasons for this decision are that the occupiers of about five nearby cottages have from time to time taken water from the well with buckets whenever their own water supply failed, and this has also been done by the occupier of an additional cottage which is, and always has been, in the same ownership as that of the farm. The vendor asserts that nobody has ever taken water from the well during

her ownership, or the previous ownership of her husband (which goes back to about 1931) or the previous ownership of her father-in-law (which goes back to about 1920) without the consent of such owners, and that such consent was always given at any time when the neighbours' wells ran dry. The vendor herself had not resided at the farm since about 1938, the farm having been let by her until the recent sale. We are not for the moment concerned with the question of any rights which adjoining owners or occupiers may have acquired by prescription, but we are concerned to know whether, if such rights have been acquired by the above six separate property owners, this makes the well a public well. In our opinion it would be necessary for the public at large to have acquired the use of the well before such a right would arise. We should be glad if you would let us know if there are any decisions on the extent of use which makes the well public.

If the well is a public well, there does not appear to be any means of discovering this fact except by direct inquiry of the local council. It does not seem, from reading s. 124 of the Public Health Act, 1936, that any notice of such vesting has to be given to the former owners or that such vesting is a land charge or registrable as such. Also, no question on this point is contained in the approved forms of inquiries of local authorities. This latter point appears to be an omission on the part of those who compiled these inquiries and we should be glad to have your views thereon. AQUA.

Answer.

The enactment has a pedigree reaching into the middle of the last century and may (perhaps) have been considered rather outside the scope of modern enactments about registration, etc. The most valuable decision is *Smith* v. *Archibald* (1880) 5 App. Cas. 489, on a parallel Scottish section, where Lord O'Hagan at p. 508 and Lord Blackburn at pp. 511, 512, directed themselves to your problem of extent. There must be a large element of fact, and in your case there seems at any rate a chance that diligent inquiry would show that the use of the well was limited to a few households, and by them was permissive : *cp.* Kelly, C. B., in *Harrop* v. *Hirst* (1868) 33 J.P. 103.

18.—Real Property—*Mortgage—Sale by mortgagee—Law of Property Act*, 1925.

I refer to P.P. 17 at p. 63, *ante*. The views there expressed appear to be contrary to those held by many persons, and I wondered if you have considered the effect of the decision in the case of *Farrar* v. *Farrars, Ltd.* (1888) 58 L.J.Ch. 185, particularly the observations of Lindley, L.J., therein. The council's powers of sale are those of a mortgagee, and the view is expressed in *Gibson's Conveyancing*, *Cheshire's Modern Law of Real Property*, and the *Encyclopaedia of Forms and Precedents* that a mortgagee, whilst not being in a position of a trustee, nevertheless cannot sell to himself. As this is a matter which could concern my council, I should be pleased to have any further observations in the light of the information referred to above. CON.

Answer.

In our answer at p. 63, *ante*, it might have been well, whilst agreeing with the course suggested in the query, to indicate that our agreement was only because of the very special circumstances. A sale by the mortgagee to himself (which before 1925 could in law have been only indirect, even if it had been allowed in equity) was of course liable to be upset in equity. Text books are, so far as we know, unanimous in stating, if they touch the point at all, that the equitable rule is still in force. The inference is that the rule is not over-ridden by s. 72 (3) of the Law of Property Act, 1925, even though the text books do not, so far as we know, cite any case later than that Act, and Sir Benjamin Cherry (the chief architect of the Act) says nothing about this equitable doctrine, in his notes upon the Act, section by section, in *Wolstenholme and Cherry*, edn. of 1925, where he actually cites *Farrar* v. *Farrars, Ltd.* (1888) 58 L.J.Ch. 185 for another purpose. Notwithstanding this, which may or may not be significant ; notwithstanding that s. 72 (3) contains no provision saving equitable rights such as is expressly included in the next subsection, it is obvious that s. 72 (3) is directed to a technical common law difficulty, not an equitable difficulty, and we should certainly never advise a local authority or other mortgagee to use it in any ordinary case. But in the case before us at p. 63, *ante*, foreclosure as a remedy was ousted by the Limitation Act, 1939 ; the council were thus left to recover the amount of the charge (if at all) either by the common law remedy of taking possession or by the statutory remedy of sale. Taking possession, even of an apparently abandoned piece of land, has its risk for a mortgagee. A *pro forma* conveyance, purporting to be executed by virtue of the Act of 1925, presents at least one more obstacle to the mortgagor if he ever turns up, and it is to be observed also that a sale by the mortgagee to his own nominee, in *Martinson* v. *Clowes* (1882) 51 L.J.Ch. 594, and other cases, whilst it would be upset in equity on application by the mortgagor, was not *per se* void. True, the council in the case before us at p. 63, *ante*, could have sold to a builder, with a condition that he would erect houses on the land, but, *semble*, *Farrar* v. *Farrar's, Ltd.*, *supra*, would have been just as much of an obstacle to their buying the houses back from him as to their building houses themselves, and what the council wanted to do was to use the land for houses of their own, not to part with it to a private purchaser.

19.—Road Traffic Acts—*" Road "—Public car park—Car left with brake not properly applied—Application of Motor Car (Construction and Use) Regulations, reg.* 82 (3).

A vehicle, the brakes of which had not been set properly, had been left unattended on a public car park when it ran away and killed the car park attendant.

Some discussion arose as to whether or not a public car park came within the meaning of a " road," and whether or not you consider proceedings could be taken against the driver for an offence under the Motor Vehicles (Construction and Use) Regulations. JULA.

Answer.

We think that a " road " must be something different from an enclosed space for cars to drive in and out of, and that there must be some evidence that, in addition to being used as a car park, it is used by the public as a means of passing from one place to another.

We should prefer, before offering an opinion on this particular case, to have fuller details of the use and position of this car park.

20.—Road Traffic Acts—*Speed limit—Utility vehicle licensed as a " private " vehicle—Used only for passengers and their effects.*

A discussion has taken place regarding the speed limit of utility vehicles. One representative asked if a person who buys a small van, licences it privately, and uses it exclusively for passengers and their effects, was the vehicle subject to a speed limit (other than in a built-up area) ? JIDI.

Answer.

The effect of the Motor Vehicles (Variation of Speed Limit) Regulations, 1950, is that, as this vehicle appears never to be used for a purpose for which a licence under the 1933 Act is required, it is not restricted to any particular speed except in a built-up area or other place where there is some general speed limit.

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